IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2062 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATSINH HIMMATSINH PARMAR

Versus

ADDITIONAL COLLECTOR (CO ORDINATION)

Appearance:

1. Special Civil Application No. 2062 of 2002

MR KK TRIVEDI for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 19/08/2004

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and order directed the respondents to delist the land of the petitioner bearing Revenue Survey No.109/1 area admeasuring about 16694 sq.mtrs. Paiki undivided share of area admeasuring about 2625 sq.mtrs. of Village Singapore, Sub-district Choryasi, District Surat from the list of the lands whose

possession were taken over by the respondents under the Urban Land Ceiling Act and has also prayed for an appropriate writ, direction and order quashing and setting aside the Mutation Entry No. 998 and Mutation Entry No. 1020 qua the land of the petitioner bearing Revenue Survey no.109/1 area admeasuring about 16694 sq.mtrs. paiki area admeasuring about 2625 sq.mtrs. of village Singanpor, Sub-District Choryasi, District. Surat. Though the alternative prayer is made in the present Special Civil Application, the petitioner is not pressing for the same qua Bharatsinh Himmatsinh Parmar.

2. Shri K.K.Trivedi, Learned Advocate for the petitioner has submitted that so far as the land in question is concerned, there was an agricultural exemption under Section 20 of the Urban Land Ceiling Act and the land in question was exempted from the purview of the provisions of the Urban Land Ceiling Act. That exemption was granted on 27.3.1978 and till date the exemption under Section 20 is continued. He has further submitted that pursuant to the order passed by the Competent Authority, the proceedings udner the Urban Land Ceiling Act have reached upto Section 10(1) of the Urban Land Ceiling Act and thereafter, the proceedings are not taken. He has further submitted that in fact, the possession of the land in question is also with the petitioners. Therefore, he has requested that in view of the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 i.e. Repeal of Act No.33 of 1976 and as per Section 3 of the Repeal Act, the repeal of the Principal Act shall not affect the validity of any order granting exemption under Section 20(1). He has further submitted that even otherwise, in view of the fact that the possession is with the petitioner and the possession has not been taken over by the State Government, all the proceedings are abetted in view of Section 4 of the Repeal Act.

3. Shri Sud, Ld. AGP on instructions from Mr.H.J.Naik, Deputy Mamlatdar, ULC, Surat does not dispute the aforesaid fact. It is conceded that the exemption granted under Section 20 is in existence and that possession qua the petitioner concerned is still with the petitioner. In that view of the matter and considering the provisions of Sections 3 & 4 of the Repeal Act, the proceedings are required to be directed to be abetted and the respondents are directed to delist the land of the petitioner bearing R.S.No.109/1 area admeasuring about 16694 sq.mtrs. paiki undivided share of area admeasuring about 2625 sq.mtrs. of Village Singanpur, Taluka Choryasi, District Surat from the list

of the lands maintained by the State Government with regard to taking over the possession by the State Government under the Urban Land Ceiling Act and Mutation Entry No.998 and Mutation Entry No.1020 qua the land of the petitioner i.e. Bharatsinh Himmatsinh Parmar qua the land of the petitioner being R.S.No.109/1 admeasuring about 16694 sq.mtrs. Paiki area admeasuring about 2625 sq.mtrs. of Village Singanpore, Sub-district Choryasi, District Surat are quashed and set aside. The petition accordingly succeeds. Rule is made absolute to the aforesaid extent with no order as to costs.

It is pointed out that pursuant to the order passed by this Court while entertaining the present Special Civil Application, an order was passed directing the petitioners to deposit an amount of Rs.10000/- which according to Shri K.K.Trivedi, Learned Advocate appearing on behalf of the petitioners is deposited. With the consent of the parties, the amount deposited by the petitioner pursuant to the order passed by this Court dated 12.2.2002 is directed to be remitted and paid to the Legal Aid Committee.

(M.R.Shah, J)
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